

1
2
3
4
5 IN THE UNITED STATES DISTRICT COURT
6
7 FOR THE NORTHERN DISTRICT OF CALIFORNIA
8

9 DESTANEE MIKAEL MORGAN,

No. C 19-1071 WHA (PR)

10 Petitioner,

ORDER TO SHOW CAUSE

11 v.

12 W.Z. JENKINS, II,

13 Respondent.
14 _____/

15 **INTRODUCTION**

16 Petitioner, a federal prisoner currently incarcerated at the Federal Correctional
17 Institution in Dublin, California, has filed a pro se petition for a writ of habeas corpus pursuant
18 to 28 U.S.C. § 2241. She has paid the filing fee. For the reasons discussed below, respondent is
19 ordered to show cause why the petition should not be granted.

20 **DISCUSSION**

21 **A. STANDARD OF REVIEW**

22 A district court may entertain a petition for a writ of habeas corpus challenging the
23 execution of a federal sentence only on the ground that the sentence is being executed "in
24 violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241(c)(3);
25 *United States v. Giddings*, 740 F.2d 770, 772 (9th Cir. 1984). The court should "award the writ
26 or issue an order directing the respondent to show cause why the writ should not be granted,
27 unless it appears from the application that the applicant or person detained is not entitled
28 thereto." 28 U.S.C. § 2243.

1 **B. LEGAL CLAIM**

2 Petitioner claims that respondents violated her right to due process by failing to remove
3 a detainer filed by San Luis Obispo County officials and by denying her approximately 90 days
4 of credits for time she served in county jail prior to being sentenced in federal court. These
5 assertions are sufficient to require a response.

6 **CONCLUSION**

7 For the foregoing reasons and for good cause shown,

8 1. The clerk shall serve by certified mail a copy of this order and the petition and all
9 attachments thereto upon the respondent and the respondent's attorney, the United States
10 Attorney for the Northern District of California. The clerk shall also send a copy of the petition
11 to the Attorney General of the United States in Washington, D.C. The clerk shall also serve a
12 copy of this order on the petitioner.

13 2. Respondent shall file with the court and serve on petitioner, within **ninety-one (91)**
14 **days** of the issuance of this order, an answer conforming in all respects to Rule 5 of the Rules
15 Governing Section 2254 Cases, showing cause why a writ of habeas corpus should not be
16 granted based on the claim found cognizable herein. Respondent shall file with the answer and
17 serve on petitioner a copy of all portions of the state prison disciplinary proceedings that are
18 relevant to a determination of the issues presented by the petition.

19 If petitioner wishes to respond to the answer, he shall do so by filing a traverse with the
20 court and serving it on respondent within **twenty-eight days** of the date the answer is filed.


21 3. Respondent may file, within **sixty-three (63) days**, a motion to dismiss on procedural
22 grounds in lieu of an answer, as set forth in the Advisory Committee Notes to Rule 4 of the
23 Rules Governing Section 2254 Cases. If respondent files such a motion, petitioner shall file
24 with the court and serve on respondent an opposition or statement of non-opposition within
25 **twenty-eight days** of the date the motion is filed, and respondent shall file with the court and
26 serve on petitioner a reply within **fourteen days** of the date any opposition is filed.

27 4. Petitioner is reminded that all communications with the court must be served on
28 respondent by mailing a true copy of the document to respondent's counsel. Petitioner must

1 keep the court informed of any change of address and must comply with the court's orders in a
2 timely fashion. Failure to do so may result in the dismissal of this action for failure to prosecute
3 pursuant to Federal Rule of Civil Procedure 41(b).

4 **IT IS SO ORDERED.**

5 Dated: April 25, 2019.

6 
7 WILLIAM ALSUP
8 UNITED STATES DISTRICT JUDGE
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28